

On October 7, 2013, I issued an order, notifying Moore that I had construed his letter as a § 2255 motion, *see Castro v. United States*, 540 U.S. 375 (2003), and that he had 10 days to submit his objection to my construction of his motion as a § 2255 motion or to submit an amended § 2255 motion signed under penalty of perjury. Moore has responded with a written objection. Moore states that he did

not intend, and does not want the court to treat, his letter as a § 2255 motion, because his Petition for a Writ of Certiorari is currently pending before the United States Supreme Court.

In light of Moore's unequivocal objection to construction of his motion as a § 2255 motion, it is **ORDERED** that the § 2255 action (DE 280) is DISMISSED WITHOUT PREJUDICE and stricken from the active docket of the court. Based upon the court's finding that the defendant has not made the requisite showing of denial of a substantial right, a certificate of appealability is DENIED.

The clerk will mail a copy of this Order to defendant.

ENTER: October 23, 2013

/s/ James P. Jones
United States District Judge